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sole proprietorship had succeeded to individual could not sue to enforce v. Rimbach Pub. Inc., — Pa Super

to corporation, whether arising in corporation. Bruno v. Southeastern

incorporated operating divi- recognized legal entity and name. 2.10

ircraft Corp., 512 F Supp 764 (D

ion is not a separate legal entity. 511 F Supp 1125 (ED Va, 1981). 512 F Supp 764 (D Kan, 1981). Sholm, 196 Kan 1, 408 P2d 891.

to sue in its own name through American Federation of Technical 324 NE2d 23.

se of a law suit may be validat- bsequent to its suspension for Const., Inc. v. Modulux, Inc.,

ayment of franchise taxes is ing its suspension, and where sion, and where the cause of ve been barred by the statute n, the statute of limitations edural right, and the action nd cannot be saved by revival nd been time-barred. Welco 120 Cal Rptr 572.

priem-Santandrea, Inc., 101 tion's charter was forfeited ation of corporate existence, orce its contract rights).

ation's right to maintain ac- to contract actions, not tort

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actions. Jay Dee Contractors, Inc. v. Fattore Const. Co., 96 Mich App 519, 293 NW2d 620.

p. 53, n. 5.

United States. Massachusetts statute provides for continued corporate existence for purposes of prosecuting or defending suits for period of three years following dissolution. See Gonzalez v. Progressive Tool & Die Co., 455 F Supp 363 (EDNY 1978).

p. 53. After note 6 insert: Where the corporation has forfeited its right to do business in the state, and also its right to appear in the state courts, the stockholders, as beneficial owners of the corporate assets, may prosecute or defend such actions as may be necessary to protect their property rights.^{4.50}

^{4.50} **Texas.** Regal Const. Co. v. Hansel (Tex Civ App), 596 SW2d 150.

p. 53, n. 10.

Nebraska. County of Madison v. City of Norfolk, 198 Neb 718, 255 NW2d 54 (construing Neb Rev Stats §25-515).

§ 4248.1. Constitutional rights.

It has been held that a corporation may bring a civil rights action to secure the protection and guarantees accorded by the United States Constitution.¹ Several fields of developing law are emerging regarding such actions as corporations seek to enforce constitutional rights traditionally accorded to individual citizens. One such field involves First Amendment rights. The Supreme Court has recently held that commercial speech is entitled to constitutional protection.² Courts have concluded that the First Amendment does not afford the news media an absolute privilege of nondisclosure of confidential news sources,^{2.50} but a qualified privilege is often recognized, particularly in civil cases.^{2.55} Litigation has also arisen in this area concerning local authorities' attempts to restrict the proselytizing activities of certain religious corporations.³ A service letter statute, which required corporations to provide former employees with letters stating the nature and character of their service and the true cause for their leaving employment, has been held unconstitutional on the basis of a corporation's right to freedom of speech.^{3.50} Also, statutes regulating consumer credit reporting agencies have been held to be an unconstitutional restraint on commercial speech.^{3.60} Another noteworthy field of civil rights litigation involves objections to the inspection procedures authorized by the Occupational Safety and Health Act of 1970.⁴ While the Supreme Court has declared the Act invalid insofar as it purports to authorize

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inspections without a search warrant or its equivalent,⁵ that decision has been regarded as upholding inspections which satisfy probable cause requirements.⁶ Also, the Supreme Court's decision has been interpreted as not precluding the Secretary of Labor from applying for search warrants ex parte, and searches conducted pursuant to such warrants have been held not violative of the Fourth Amendment.⁷

While corporate claims for protection based on constitutional guarantees have been recognized in a number of issues, the corporate identity, that of an artificial being created for the management and creation of capital, has been held determinative in denying corporations certain constitutional rights.

Purely personal guarantees are unavailable to corporations and other organizations where the historic function of the guarantee has been limited to the protection of the individual.

6.60 Whether a particular guarantee is purely personal or is unavailable to corporations for some other reason depends upon the nature, history, and purpose of the particular constitutional provision which is being asserted by the organization.

A corporation has no Fifth Amendment privilege against self-incrimination, nor does an individual acting in his official capacity as an agent or officer thereof.⁷ But a corporation is entitled to the Fifth Amendment's protection against taking of property, and this protection has been applied to prevent the disclosure of trade-secret research data in the possession of government agencies.^{7,10}

The contention has been litigated and rejected that limitations on corporations in venue statutes different from those imposed on individuals violate the equal protection clause of the Fourteenth Amendment.⁸ A corporation's constitutional rights are not violated by a statute which distinguishes between a corporation's ability to make an appearance in an action without an attorney and an individual's right to appear pro se. The distinction is said to be justified because a corporation, unlike a natural person, cannot act in its own behalf, but must always act through an agent.⁹ Accordingly, such a distinction has been held not to constitute a denial of equal protection, because natural persons and corporations are not similarly situated,¹⁰ nor a denial of due process, since it does not involve the deprivation of any substantial rights.¹¹ Similarly, it has been held that corporations are not denied fundamental rights when they are prevented from voting in an annexation

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The making of the constitution has been a long and arduous process. It has been a process of compromise and negotiation, of balancing the interests of different groups and individuals. The constitution is a living document, one that can be amended and changed over time. It is a document that reflects the values and beliefs of the people of the United States. It is a document that has shaped the course of our history and continues to shape our future.

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² United Steel, 425 U.S. 759 (1975).

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³ United Business, Inc.

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401, 70 S. Ct. 1011, 101 L. Ed. 1321 (1944).
416 U.S. 213, 44 L. Ed. 2d 162, 32 S. Ct. 855 (1973).
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referendum, the right to vote being regarded as a purely personal guarantee, historically limited to the protection of the individual.^{11,10}

The making of political contributions and political expenditures has been characterized as directly linked to an individual's right to vote, and constitutionally protected.¹² In this regard a distinction has been drawn between political contributions and political expenditures.¹³ Statutes prohibiting political contributions have been upheld,¹⁴ while statutes prohibiting political expenditures have been held unconstitutional.¹⁵

¹ **United States.** *Fulton Market Cold Storage Co. v. Cullerton*, 582 F2d 1071 (CA 7th, 1978). See also *International Oceanic Enterprises, Inc. v. Menton*, 614 F2d 502 (CA 5th, 1980) (corporation successfully challenged restrictive city zoning ordinance on grounds that it abridged corporation's First and Fourteenth Amendment rights).

Corporation is "person" for purposes of equal protection and due process clauses of Fourteenth Amendment. *Sawmill Products, Inc. v. Town of Cicero, Cook County, Illinois*, 477 F Supp 636 (ND Ill 1979).

Michigan. Corporate surety is entitled to same relief from forfeiture of bond as individual depositor of bail, and unequal treatment is violation of constitutional guaranty of equal protection. *People v. Pavlak*, 99 Mich App 190, 297 NW2d 878.

Corporation and the constitution: economic due process and corporate speech, see 90 Yale LJ 1833 (1981).

² **United States.** *Virginia Pharmacy Board v. Virginia Consumer Council*, 425 US 748, 48 L Ed2d 846, 96 S Ct 1817.

See also, §6733.1.

²⁵⁰ **United States.** *Herbert v. Lando*, 441 US 153, 60 L Ed 2d 115, 99 S Ct 1635 (1979).

²⁵⁵ **United States.** See, e.g., *Silkwood v. Kerr-McGee Corp.*, 563 F2d 433 (CA10, 1977).

³ **United States.** See *Heffron v. International Soc. for Krishna Consciousness, Inc.*, — US —, 69 L Ed 2d 298, 101 S Ct 2559 (1981).

³⁵⁰ **United States.** See *Rimmer v. Colt Industries Operating Corp.*, 495 F Supp 1217 (WD Mo, 1980), analyzing Mo Rev Stats § 290.140.

³⁶⁰ **Maine.** See *Equifax Services, Inc. v. Cohen (Me)*, 420 A2d 189.

⁴²⁹ USC 651 et seq.

⁵ **United States.** *Marshall v. Barlow's, Inc.*, 436 US 307, 56 L Ed2d 305, 98 S Ct 1816 (1978).

⁶ **United States.** *Marshall v. Weyerhaeuser Co.*, 456 F Supp 474 (DCNJ 1978).

⁶¹⁰ **United States.** *Stoddard Lumber Co., Inc. v. Marshall*, 627 F2d 984 (CA9, 1980).

⁶⁵⁰ **United States.** *United States v. Morton Salt Co.*, 338 US 632, 94 L Ed 401, 70 S Ct 357 (1950) (right to privacy); *California Bankers Ass'n v. Shultz*, 416 US 21, 39 L Ed 2d 812, 94 S Ct 1494 (1974) (protection against compulsory self-incrimination).

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North Carolina. Texfi Industries, Inc. v. City of Fayetteville, 301 NC 1, 269 SE2d 142 (right to vote).

^{6.60} **United States.** United States v. White, 322 US 694, 88 L Ed 1542, 64 S Ct 1248 (1944).

^{6.70} **United States.** First Nat. Bank of Boston v. Bellotti, 435 US 765, 55 L Ed 2d 707, 98 S Ct 1407 (1978).

⁷ **United States.** Privilege is purely personal and cannot be utilized by corporation. In re Grand Jury Subpoena, 460 F Supp 150 (WD Mo 1978).

Missouri. State v. Levitt (Mo App), 572 SW2d 252.

Privilege against self-incrimination as applied to corporations and corporate officers and directors, see § 4671.

^{7.10} **United States.** See Amchem Products, Inc. v. Costle, 481 F Supp 195 (SDNY 1979) (Environmental Protection Agency was enjoined from releasing data regarding pesticide applications which it intended to use for benefit of plaintiff's competitors in issuance of pesticide registrations).

⁸ **Rhode Island.** See Plantation Legal Defense Services, Inc. v. O'Brien (RI), 401 A2d 1277, citing Bain Peanut Co. v. Pinson, 282 US 499, 75 L Ed 482, 51 S Ct 228 (1931).

⁹ **Hawaii.** Distinction is justified because natural person appearing pro se would not be acting in representative capacity. Oahu Plumbing & Sheet Metal, Ltd. v. Kona Const., Inc., 60 Haw 372, 590 P2d 570.

New York. Corporations can do nothing except through agency of others. Oliner v. Mid-Town Promoters, Inc., 2 NY2d 63, 156 NYS2d 833, 138 NE2d 217.

¹⁰ **Hawaii.** Oahu Plumbing & Sheet Metal, Ltd. v. Kona Const., Inc., 60 Haw 372, 590 P2d 570.

Ohio. Law need not operate identically on persons not similarly situated. Union Savings Ass'n v. Home Owners Aid, Inc., 23 Ohio St2d 60, 262 NE2d 558.

¹¹ **Hawaii.** Oahu Plumbing & Sheet Metal, Ltd. v. Kona Const., Inc., 60 Haw 372, 590 P2d 570.

Ohio. Union Savings Ass'n v. Home Owners, Inc., 23 Ohio St2d 60, 262 NE2d 558.

^{11.10} **North Carolina.** Texfi Industries, Inc. v. City of Fayetteville, 301 NC 1, 269 SE2d 142.

¹² **United States.** See Federal Election Commission v. Weinstein, 462 F Supp 243 (SDNY 1978), and citations therein.

¹³ **United States.** See Buckley v. Valeo, 424 US 1, 46 L Ed2d 659, 96 S Ct 612 (1976).

¹⁴ **United States.** Federal Election Commission v. Weinstein, 462 F Supp 243 (SDNY 1978).

¹⁵ **United States.** Foreman v. General Motors Corp., 473 F Supp 166 (ED Mich 1979). See also, California Motor Transport v. Trucking Unlimited, 404 US 508, 30 L Ed2d 642, 92 S Ct 609 (1972); United Mine Workers v. Pennington, 381 US 657, 14 L Ed2d 626, 85 S Ct 1585 (1965); Eastern R. Presidents Conference v. Noerr Motor Freight Inc., 365 US 127, 5 L Ed2d 464, 31 S Ct 523 (1961); First Nat. Bank of Boston v. Bellotti, 435 US 765, 55 L Ed2d 707, 98 S Ct 1407 (1978).

Texas. See Frias v. Board of Trustees of Ector County Independent School Dist. (Tex Civ App), 584 SW2d 944.

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